

EXHIBIT A

WHEREAS, on September 30, 2021 Governor Newsom signed a series of policing reform legislation items into law. These laws are aimed at increasing police transparency, and AB 481 in particular requires law enforcement agencies to adopt a military equipment use policy (“Policy”) prior to taking certain actions relating to the funding, acquisition, or use of military equipment as defined by the law, which Policy must be adopted by ordinance at a regular meeting of the governing body for that agency (i.e., the City Council); and

WHEREAS, AB 481 requires adoption of the Policy before a law enforcement agency can take action to request military equipment as defined by the statute; seek funds (such as grants or in-kind donations) for acquiring military equipment; actually acquire military equipment, either permanently or temporarily by owning, borrowing, or leasing; collaborate with other law enforcement agencies to deploy or use military equipment in the agency’s territorial jurisdiction; use new or existing military equipment in a manner not previously subject to AB 481’s scope; solicit or respond to a proposal for, or enter into an agreement with, any person or entity to seek funds for, apply for, acquire, use, or collaborate in using military equipment; or to acquire military equipment through any other means not specifically detailed in the statute; and

WHEREAS, the City Council finds that the acquisition of “military and militaristic equipment,” as defined in AB 481, and the deployment of such military equipment in the City of Milpitas, can impact the public’s safety and welfare, including introducing significant risks to civil rights, civil liberties, and physical and psychological wellbeing, and incurring significant financial costs; and

WHEREAS, the City Council finds that the public has a right to know about any funding, acquisition, or use of military or militaristic equipment by the City of Milpitas, as well as a right to participate in any City decision to fund, acquire, or use such equipment; and

WHEREAS, the City Council finds that decisions regarding whether and how military or militaristic equipment is funded, acquired, or used should give strong consideration to the public’s welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input; and

WHEREAS, the City Council finds that legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public’s welfare, safety, civil rights, and civil liberties before military or militaristic equipment is funded, acquired, or used; and

WHEREAS, the City Council finds that if military or militaristic equipment is acquired, reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights safeguards have been strictly adhere to; and

WHEREAS, in accordance with AB 481, the proposed Policy has been made available on the Milpitas Police Department’s website at least 30 days prior to the public hearing by the City Council to adopt the Policy, and once adopted, the Policy will be made available to the public on the Police Department’s website for as long as the covered military equipment is available for use; and

WHEREAS, in accordance with AB 481, the Policy is being agendized as an open session item at a regular meeting of the City Council, and public comment on the item will be allowed in accordance with the Brown Act; and

EXHIBIT A

WHEREAS, this Ordinance shall be reviewed by the City Council at least annually, and based on an annual military equipment report that must be submitted to the City Council pursuant to AB 481, the City Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval. If the City Council cannot make such a determination, it shall either disapprove a renewal of the authorization for that type of equipment, or require modifications to the Policy in a manner to resolve the lack of compliance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. NAME OF ORDINANCE

- (A) This Ordinance establishes guidelines for the acquisition, funding, use and reporting of “controlled equipment”, as the term is defined in Government Code section 7070. This Ordinance is provided to fulfill the obligations set forth in Assembly Bill No. 481. These obligations include but are not limited to seeking approval on specific items deemed to be controlled equipment and requirements related to compliance, annual reporting, cataloging, and complaints regarding these items.
- (B) This policy shall be made publicly available on the City’s website and shall be reviewed annually by the Governing Body.
- (C) This Ordinance shall be known as Controlled Equipment: Funding, Acquisition, and Use Ordinance.

SECTION 3. DEFINITIONS

- 1. Governing Body- The legislative body of the City of Milpitas.
- 2. Controlled Equipment- Includes items defined by California Government Code section 7070, subsections (c)(1) through (c)(16).
- 3. “Controlled Equipment Impact Statement” means a publicly released, written document that includes, at a minimum, all of the following:
 - (a) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.

EXHIBIT A

- (b) Purpose: The purposes and reasons for which the Milpitas Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
 - (c) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the estimated or anticipated costs of each proposed use, the estimated or anticipated costs of potential adverse impacts, and the estimated or anticipated annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
 - (d) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.
 - (e) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
 - (f) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.
7. Location: The location(s) it may be used, using general descriptive terms.
8. Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third-party service providers.
9. Track Record: A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

SECTION 4. Acquisition and Use of Controlled Equipment

1. The Department shall obtain approval of the governing body annually prior to engaging in any of the following activities:
- (a) Requesting controlled equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 - (b) Seeking funds for controlled equipment including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

EXHIBIT A

- (c) Acquiring controlled equipment either permanently or temporarily, including by borrowing or leasing.
 - (d) Collaborating with another law enforcement agency in the deployment or other use of controlled equipment within the territorial jurisdiction of the governing body.
 - (e) Using any new or existing controlled equipment for a purpose, in a manner, or by a person not previously approved.
 - (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, controlled equipment.
2. In seeking the approval of the governing body, the Department shall submit a proposed controlled equipment use policy, or subsequent amendments, to the City Council and the public via the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the controlled equipment at issue.

SECTION 5. Controlled Equipment Use Considerations

1. The controlled equipment acquired and authorized by the Department is:
- (a) Necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 - (b) Reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
2. Controlled equipment shall only be used by a Department employee only after applicable training, including any course required by the Commission on Peace Officer Standards and Training, has been completed, unless exigent circumstances arise.

SECTION 6. Controlled Equipment Reporting Considerations

1. The Department shall submit an annual controlled equipment report to City Council that addresses each type of controlled equipment possessed by the Department.
2. The Department shall also make each annual controlled equipment report publicly available on its internet website for as long as the controlled equipment is available for use.
3. The annual controlled equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of controlled equipment:
- (a) A summary of how the controlled equipment was used and the purpose of its use;
 - (b) A summary of any complaints or concerns received concerning the controlled equipment;

EXHIBIT A

- (c) The results of any internal audits, any information about violations of the controlled equipment use policy, and any actions taken in response;
- (d) The total annual cost for each type of controlled equipment (including the cost of acquisition, personnel training, transportation, maintenance) and the source of the funds;
- (e) The quantity possessed for each type of controlled equipment.
- (f) If the Department intends to acquire additional controlled equipment for the next year, it shall within 30 days of submitting and publicly releasing an annual military equipment report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual controlled equipment report and the Departments source of funding, acquisition, or use of the controlled equipment which shall occur as a part of the Departments presentation to the governing body.

SECTION 7. Cataloging of Controlled Equipment

All controlled equipment kept and maintained by the Milpitas Police Department shall be cataloged in a way which addresses each of the following requirements:

1. The manufacturer's description of the equipment;
2. The capabilities of the equipment;
3. The purposes and authorized uses for which the Department proposes to use the equipment;
4. The expected lifespan of the equipment;
5. The fiscal impact of the equipment, both initially and for on-going maintenance;
6. The quantity of the equipment, whether maintained or sought.

SECTION 8. Compliance

1. The Chief of Police or their designee will ensure that all Department members comply with this policy. The Chief of Police or their designee(s) will conduct an annual audit. The Chief of Police or designee will be notified of any policy violations. All instances of non-compliance will be reported to Governing Body via the annual controlled equipment report.
2. Any member of the public can register a question or concern regarding controlled equipment by contacting the Milpitas Police Department Administrative Unit via email at pdadmin@ci.milpitas.ca.gov. A response to the question or concern shall be completed by the Department in a timely manner.
3. Any member of the public can submit a complaint to the Department and in any form (i.e. in person, telephone, email, etc.).

EXHIBIT A

4. Once the complaint is received, the Chief of Police or authorized designee shall ensure that all complaints are documented on a complaint form. The complaint form shall be routed to the Chief of Police or their designee in accordance with procedures put in place in the Milpitas Police Departments Policy Manual.

SECTION 9. Funding

The Department shall seek Governing Board approval for controlled equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

The Department has authority to apply for funding prior to obtaining Governing Board approval in the case of exigent circumstances. The Department shall obtain Governing Board approval as soon as practicable.

SECTION 10. Exigent Circumstances

In rare circumstances, exigent circumstances may occur where the immediate procurement and use of controlled equipment may be necessary to preserve life, prevent physical harm to officers or other persons, prevent the destruction of relevant evidence, prevent the escape of the suspect, or maintain public safety. In the event such an event occurs, the Chief of Police or the authorized designee may authorize the procurement and use of controlled equipment. Any exigent procurement and/or use of controlled equipment will be reported to the governing body, in writing, unless such information is confidential or privileged under local, state or federal law.

SECTION 11. Maintenance and Resupply of Controlled Equipment

In the event a previously approved supply of controlled equipment falls below the approved quantity, the Department may replenish the supply, as needed, without first obtaining additional approval from the Governing Body.

SECTION 12. Severability

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 13. Not a CEQA Project

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 14. Effective Date

EXHIBIT A

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.